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14 **UNITED STATES DISTRICT COURT**
15 **EASTERN DISTRICT OF WASHINGTON**

16 MARK A. HOLUM, an individual,

17 No. CV-08-081-EFS

18 Plaintiff,

19 v.
20 PLAINTIFF'S LR 56.1(b)
21 CORPORATION; EXTENDICARE
22 STATEMENT OF FACTS

23 EXTENDICARE HOMES, INC., a
24 corporation; EXTENDICARE
HEALTH SERVICES, INC., a
corporation; and EXTENDICARE
HEALTH FACILITIES, INC., a
corporation,

25 Defendants.
26

27
28 PLAINTIFF'S STATEMENT OF FACTS - 1

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1 Plaintiff, by and through his undersigned attorneys, submits the following
2 LR 56.1(b) Statement of Facts.

3 1. Plaintiff MARK HOLUM was and is a Registered Nurse in the State
4 of Washington. (Declaration of Mark Holum at p. 2, ¶3.)

5 2. On November 30, 2004, Plaintiff was employed by Defendant
6 Extendicare Homes, Inc. at a facility known as the "Gardens". (Declaration of
7 Mark Holum at p. 2, ¶4.)

8 3. On November 17, 2004, T. H., a developmentally delayed 37-year-old
9 male was admitted to the Gardens where Mark Holum was employed.
10 (Declaration of Sue Goodrick at p. 2, ¶3). T. H. was admitted with a diagnosis of
11 Developmental Delays, Bipolar Disorder (manic-depression), Depression and
12 Anxiety, recurrent aspiration pneumonia, cerebral palsy, and recent gastrotomy
13 tube placement (Declaration of Sincerie Arnold, at p.2, ¶4; Declaration of Sue
14 Goodrick at pp. 2-3, ¶7).

15 4. Before T. H. was admitted, the Director of Administration for
16 Extendicare, Greg Calvert, and the Director of Nursing for the Gardens were
17 advised repeatedly by nursing staff that residents with mental illnesses were not
18 advised repeatedly by nursing staff that residents with mental illnesses were not
19

1 suitable residents at the Gardens for multiple professional reasons. (Declaration of
 2 Sincerie Arnold, at pp. 3-4, ¶11.)
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4 5. Before T.H. was admitted the Extendicare Administration was
 5 specifically told of T. H.'s assaultive behavior and the inability of a group home
 6 staff to control his behavior. (Declaration of Michelle Rashka, p. 4 ¶13.)
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8 6. The nursing staff of the Gardens was not trained in providing care to
 9 mentally ill individuals. The Gardens' nursing staff did not have the training in
 10 psychiatric nursing to provide day-to-day care to individuals who had dual
 11 diagnoses of mental retardation and mental illness. (Declaration of Sincerie
 12 Arnold, at p. 4, ¶12; ¶13.)
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14 7. Whenever the staff of the Gardens expressed concerns about being
 15 able to provide care to patients with mental illnesses, including, but not limited to,
 16 addressing the safety of other residents and staff, the Extendicare administration
 17 made it clear that it was in their economic interest to fill the facility's beds with
 18 residents no matter what the risk to the other residents and staff. (Declaration of
 19 Sincerie Arnold, at pp. 5-6, ¶18; also, Declaration of Michelle Rashka, p. 4, ¶13.)
 20

21 8. T. H. was an individual with the dual admission diagnosis of mental
 22 retardation and mental illness. The Extendicare administration knew that T. H.
 23

1 had both mental retardation and mental illness before he was admitted to the
2 Gardens on November 17, 2004, and when he was allowed back from the Sacred
3 Heart Emergency Room on November 29, 2004. (Declaration of Sincerie Arnold,
4 at p. 6, ¶22.) T.H. was a greater problem because of his dual diagnosis of mental
5 retardation and mental illness. (Declaration of Sincerie Arnold at p. 7 ¶ 24.)
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8 9. According to an Extendicare policy and procedure the dual diagnosis
9 of mental retardation and mental illness were matters that required specific
10 consideration as to whether the safety of other residents and the staff was assured.
11 (Declaration of Sincerie Arnold Ex. P-1 at p. 25, 27) Extendicare recognized it had
12 a “responsibility to ensure that proper care is provided”, *e.g.*, presumably nurses
13 with psychiatric training, education and skill in managing patients with mental
14 illness that would implicate concerns for the safety of other residents and staff.
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16 (Declaration of Sincerie Arnold, at p. 8-9 ¶26(c), p. 6 ¶22, Ex. P-1.)
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19 10. The yellow flag (light) considerations of the Extendicare were
20 required to be addressed before T. H.’s admission and certainly before he was
21 allowed to remain in The Gardens on November 29th. (Declaration of Sincerie
22 Arnold pp. 7-8, ¶26, ¶27.
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1 11. By November 26, 2004, and again on November 29, 2004, the
 2 Gardens neither had trained staff nor sufficient staff to provide safe and adequate
 3 care to T. H. who was both mentally retarded and mentally ill. The Gardens had a
 4 history of safety problems with prior residents who were mentally ill or improperly
 5 allowed to be residents at the Gardens. (Declaration of Sincerie Arnold, at p. 7,
 6 ¶24, p. 14 ¶45, and also Declaration of Mark A. Holum, p. 2, ¶5.)
 7
 8

9 12. Days before November 29, 2004, the Extendicare administrative
 10 director knew that because of the verbal and written concerns that he had received
 11 from nurses and staff at the Gardens, that T. H. was uncontrollable by the staff at
 12 the Gardens. (Declaration of Sincerie Arnold, at p. 7, ¶25, p. 45, and also
 13 Declaration of Michelle Rashka, p. 4 ¶13 and also p. 2 ¶7, p. 3 ¶¶8-9.)
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16 13. The administration at the Gardens knew that T. H. was a known
 17 danger to other residents and staff because the administration had been advised of
 18 nursing staff's specific concerns about T. H. as a resident. (Declaration of
 19 Sincerie Arnold, at p. 11, ¶34, p. 14 ¶45; Declaration of Sue Goodrick, p. 4 ¶12; p.
 20 6 ¶12; Declaration of Michelle Rashka, p. 4 ¶13 and also p. 2 ¶7, p. 3 ¶¶8-9.)
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 22

23 14. On November 29, 2004, T. H. should not have been allowed to return
 24 to the Gardens from Sacred Heart Medical Center when staff had been physically
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 26

1 assaulted by T. H. who was mentally retarded and mentally ill. Given T. H.'s
 2 respiratory status with excessive respiratory secretions, which lowered his oxygen
 3 levels, further compromising T. H.'s already severely compromised mental
 4 functioning and state, he should not have been allowed back into the Gardens on
 5 November 29, 2004. (Declaration of Sincerie Arnold, at p. 11, ¶35; and
 6 Declaration of Sue Goodrick at p. 4 ¶12, p. 5 ¶16, ¶18, p. 6 ¶19, ¶20.)
 7

8 15. Nurse Sincerie Arnold specifically stated in her Declaration that Greg
 9 Calvert's testimony "the progress notes of Mr. T. H.'s' care from his admittance
 10 on November 17, 2004 to November 29, 2004, showed no incidents of violence, or
 11 psychotic episodes" are untrue. (Declaration of Sincerie Arnold, at p. 14, ¶42.)
 12 Before T. H. was admitted, Michelle Rashka, CNA, warned the Extendicare
 13 Administration that T. H. was violent and had assaulted the staff of the prior
 14 Group Home, *e.g.*, "T. H. was tackling and push the staff up against or across the
 15 furniture in the home". (Declaration of Michelle Rashka, p. 3 ¶8, p. 4 ¶13.)
 16

17 16. Additionally, Nurse Sincerie Arnold identified where T. H.'s records
 18 specifically identified that T. H. was mentally deteriorating because of the over-
 19 stimulation of the Extendicare nursing home environment. (Declaration of
 20 Sincerie Arnold at p. 9-10, ¶30, ¶31, Ex P-2 at pp. 28, 29, 31. The deterioration of
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1 T.H. was noted in the Medicare Certification of funding assessment tool (MDS).
2 (Declaration of Sincerie Arnold at p. 10 ¶ 31. Before November 29, the
3 Administration was notified at multiple times and by multiple means that T.H. was
4 a danger to the residents and staff. (Declaration of Sincerie Arnold at p. 7 ¶ 23, ¶
5 24).
6

7 17. T. H. assaulted a member of the kitchen staff at the Gardens who was
8 attempting to provide one-on-one care to T. H. before November 26, 2004.
9 (Declaration of Sincerie Arnold, at p. 14, ¶43.)
10

11 18. The Director of Nursing and the Administrative Director at the
12 Gardens were advised of T. H.'s pre-November 26th assault. (Declaration of
13 Sincerie Arnold, at p. 14, ¶44.)
14

15 19. On multiple occasions before November 29, 2004, the Director of
16 Nursing and the Administrative Director at the Gardens were told that T. H. was
17 going to hurt someone and that T. H. needed to be removed from the Gardens
18 facility before someone was seriously hurt. (Declaration of Sue Goodrick, pp. 5-6
19 ¶18.) The warnings to the administration at the Gardens were supported by the
20 fact that the Gardens neither had sufficient staff nor trained staff to deal with a
21 patient such as T. H. who was both mentally retarded and had mental illness.
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(Declaration of Sincerie Arnold, at p. 12 ¶37, ¶38, p. 14, ¶45.) From November 28, 2004, to the morning of November 29, 2004, T. H. mentally deteriorated to the point that he was manifesting psychotic behavior by increasing demands for attention, agitation, constant verbalization and movements. T. H. had been up for 48 hours which was an indication that T. H. was in a manic phase of his bipolar mental illness and was psychotic. (Declaration of Sincerie Arnold, at p. 15, ¶48.) T.H. had deteriorated to the point that Extendicare staff could no longer control T. H.'s behavior. (Declaration of Sue Goodrick at p. 3, ¶8).

20. On the morning of November 29, 2004, T. H. had deterioration in his respiratory status and had increased oral secretion. (Declaration of Sue Goodrick at p. 3 ¶8) As such, staff at the Gardens was facing more danger because T. H. had to be suctioned more frequently to keep him from developing pneumonia. (Declaration of Sincerie Arnold, at p. 16, ¶50.) T. H. probably had deliriums because of his compromised respiratory status. (Declaration of Sue Goodrick at p. 5, ¶18.) By November 29, T. H. had deteriorated to a psychotic state that presented a danger to the safety of the other residents and staff. (Declaration of Sincerie Arnold, p. 15 ¶21.)

1 21. On the morning of November 29, 2004, T. H. was taken by
 2 ambulance to the Emergency Room at Sacred Heart Medical Center for both
 3 increased respiratory secretions and increasing behavior. (Declaration of Sincerie
 4 Arnold, at p. 16, ¶52, Ex. P-2 p. 21 ; Declaration of Sue Goodrick at p. 3, ¶8, ¶9).
 5

6 22. The Emergency Department notes from Sacred Heart Medical Center
 7 on November 29, 2004, showed that T. H. had to be restrained in a Posey belt to
 8 control him in the Emergency Room. (Declaration of Sincerie Arnold, at p. 17,
 9 ¶53; Ex. P-5 at p. 45; Declaration of Sue Goodrick, p. 5 ¶16.)
 10

11 23. Under federal and state law, a residential facility such as the Gardens
 12 cannot take a resident into the facility and immediately place a resident in a
 13 physical restraint, such as a Posey belt. (Declaration of Sincerie Arnold, at
 14 p. 17, ¶54¹;))
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16 24. The Extendicare Administrative Director knew that the Gardens could
 17 not lawfully, immediately, and continuously confine T. H. by use of a Posey
 18 restraint on November 29, 2004. In this regard, the Extendicare administration
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 26 ¹ Under the federal regulations of nursing homes and skilled nursing facilities, residents had the right to be free from
 27 any physical or chemical restraints imposed for discipline or conveniences, and not required to treat resident's
 28 PLAINTIFF'S STATEMENT OF FACTS - 9

1 knew that T. H. could not be discharged from Sacred Heart Medical Center and
2 then be immediately placed in a Posey restraint at the Gardens in order to prevent
3 him from injuring residents and staff. (Declaration of Sincerie Arnold, at pp. 17-
4 18, ¶56;.)

5 25. On November 29, 2004, the nursing assessment at the Gardens
6 concluded that T. H. had previously assaulted an untrained kitchen staff trying to
7 work with T. H. on a one-on-one basis and by November 29, 2004, T. H. could no
8 longer be controlled by the nursing staff. The nursing assessment was that T. H.
9 had to be removed from the Gardens because he was going to harm another
10 person. (Declaration of Sue Goodrick, p. 5-6 ¶18; Declaration of Sincerie Arnold,
11 p. 12 ¶38, p. 14 ¶45.) The nursing assessment showed that the Gardens had
12 neither the resources nor the staff to stop T. H. from assaulting others.
13 (Declaration of Sincerie Arnold, at p. 18, ¶57 and also p. 12 ¶37.)

14 26. T. H. received no treatment at Sacred Heart Medical Center on
15 November 29, 2004 for his dangerous and unmanageable behavior. (Declaration
16 of Sue Goodrick at p. 5 ¶18). On November 29th, the Acting Administrative
17

18 medical symptoms. *E.g.*, 42 CFR ¶483.13 F-Tag 221. Placing physical restraints on T. H. would not be treatment of
19 Bipolar psychosis or his mental retardation.

1 Director of the Gardens had the authority to tell the hospital that T.H. could not be
2 returned to the Gardens. (Declaration of Sue Goodrick at p. 5 ¶17.)
3

4 27. On November 29, 2004, the nursing staff told the Director of Nursing
5 and Administrative Director at the Gardens that T. H. was not a suitable resident
6 for the Gardens and that T. H. was going to harm others. (Declaration of Sincerie
7 Arnold, at p. 18, ¶58; and also Declaration of Sue Goodrick at p. 4 ¶¶11, 12.)
8 After T.H. returned Nurse Goodrick made multiple attempts to get a Mental Health
9 Professional to come to the Gardens to declare T.H. psychotic, so he would be
10 removed by law to another facility. (Declaration Sue Goodrick at p. 4-5 ¶ 15, Ex.
11 P-6 at p. 16. Declaration of Sincerie Arnold Ex. P-4 at p. 41)
12

13 28. Nurse Sue Goodrick notified the Administrative Director and notified
14 the Director of Nursing of the out-of-control behavior of T. H. and that, based
15 upon the nursing assessments, T. H. was going to hurt himself or others.
16 (Declaration of Sue Goodrick at p. 4, ¶12).
17

18 29. On November 29, 2004, after the Director of Nursing and
19 Administrative Director allowed T. H. back into the Gardens from Sacred Heart
20 Medical Center, T. H. engaged in multiple physical assaults on the staff. T. H.
21 was observed and documented to be in a psychotic state at 4:30 p.m. and 6:45 p.m.
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23

1 during the evening shift on November 29th. (Declaration of Sincerie Arnold, at p.
 2 18, ¶59.) The night of November 29 into the early morning of November 30, after
 3 being up for more than 48 hours, T.H. slept. (Declaration of Sincerie Arnold Ex.
 4 P-2 at p 39.)

5 30. T. H. should have been removed from the Gardens on
 6 November 29, 2004, when he began assaulting others. A psychotic ambulatory,
 7 mentally retarded 37-year-old male in a residential extended care facility such as
 8 the Gardens will harm others. (Declaration of Sincerie Arnold, at pp. 18-19, ¶60,
 9 ¶61; and also Declaration of Sue Goodrick at p. 6 ¶19, 20.)

10 31. The administration at Extendicare intended to completely disregard
 11 the safety of other residents and staff because the only response they made to
 12 repeated professional concerns by staff regarding the admission and discharge of
 13 mentally ill residents was to either “shut-up” or the “concerned” staff would be out
 14 of a job. (Declaration of Sincerie Arnold, at p. 19, ¶63, ¶64; and also Declaration
 15 of Michelle Rashka p. 4 ¶ 13.)

16 32. It was certain that T. H. would become violent and would in fact
 17 assault other people at the time he was readmitted to the Gardens on November 29,
 18 2004. (Declaration of Sue Goodrick at p. 6, ¶19)

33. T. H. was readmitted to the Gardens on November 29, 2004. No changes were made to his care, so T. H. continued to be a danger to others. (Declaration of Sue Goodrick at pp. 5-6, ¶18)

34. On November 30, 2004, before 9:00 a.m. T. H. violently assaulted Plaintiff MARK HOLUM as Mr. Holum. As a result of this violent attack, Plaintiff MARK HOLUM was severely injured. (Declaration of Mark Holum at pp. 4-5 ¶12, ¶13, ¶14, ¶15. (Declaration of Sincerie Arnold Ex P-2 p. 37 notation to transport signed at 9:10 a.m.)

35. In less than an hour of the November 30, 2004, assault, T.H. was discharged from the Gardens. (Declaration of Sincerie Arnold Ex. P-2 pp. 37, 39.)

DATED this 9 day of January, 2009.

DAWSON & MEADE

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CERTIFICATE OF SERVICE

I, Karen S. Brasefield, am a citizen of the United States and a resident of the State of Washington; I am over the age of eighteen (18) years; I am competent to be a witness in a court of law, and I am not a party to the within action.

The undersigned certifies under penalty of perjury under the laws of the State of Washington, that on the 9th day of January, 2009, the foregoing document was delivered to the following person(s) in the manner indicated:

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PLAINTIFF'S STATEMENT OF FACTS - 14

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